

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BRIAN J. PIERCE,
Petitioner,

v.

LUIS SPENCER,
Respondent.

Civil Action No. 05-10292-RWZ

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The Court lacks subject matter jurisdiction to consider the instant habeas corpus petition, and it should, therefore, be dismissed. As Judge Stearns has found, Petitioner has previously sought to challenge this judgment in this Court, and this is a second or successive habeas corpus petition, which may not be filed in this Court without leave from the First Circuit. Supplemental Appendix [“Supp. App.”] at A:1-3; 28 U.S.C. § 2244(b)(3)(A). The First Circuit has denied such leave. Supp. App. at B:1. As Judge Stearns noted, the requirement of leave to file the petition is jurisdictional. *See United States v. Barrett*, 178 F.3d 34, 41 (1st Cir. 1999). Faced with such a petition, this Court may either transfer the petition or dismiss it. First Circuit Local Rule 22.2(e). Since the First Circuit has already denied leave to file another petition, transfer would be futile, and the petition should be dismissed.

Respectfully submitted,
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